

# Senate Study Bill 1148 - Introduced

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ZAUN)

## A BILL FOR

1 An Act relating to asset forfeiture by prohibiting civil  
2 asset forfeiture for property valued at less than a  
3 minimum amount, raising the standard of proof for asset  
4 forfeiture, prohibiting the transfer of certain seized  
5 property to the federal government for forfeiture, requiring  
6 a proportionality review for property to be forfeited, and  
7 requiring law enforcement agencies to retain certain records  
8 related to asset forfeiture and including applicability  
9 provisions.  
10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 809A.1, Code 2017, is amended by adding  
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Convicted*" or "*conviction*" includes  
4 a finding of guilt, a plea of guilty, deferred judgment,  
5 deferred or suspended sentence, adjudication of delinquency,  
6 or circumstances where a person is not charged with a criminal  
7 offense that is a serious or aggravated misdemeanor or felony  
8 related to the action for forfeiture based in whole or in part  
9 on the person's agreement to provide information regarding the  
10 criminal activity of another person.

11 NEW SUBSECTION. 001. "*Instrumentality*" means property  
12 otherwise lawful to possess that is used in or intended to be  
13 used in a public offense.

14 NEW SUBSECTION. 1A. "*Minimum civil forfeiture amount*" means  
15 fifteen thousand dollars, as adjusted under this subsection.  
16 Beginning January 1, 2019, the minimum civil forfeiture amount  
17 shall be annually increased or decreased by applying the  
18 percentage change in the consumer price index for all urban  
19 consumers for the twelve-month period ending in September of  
20 the prior year published in the federal register by the United  
21 States department of labor, bureau of labor statistics. The  
22 attorney general shall calculate the new amount and publish it  
23 on the attorney general's internet site, and such calculation  
24 and publication is exempt from the provisions of chapter 17A.

25 Sec. 2. Section 809A.5, subsection 2, paragraph b, Code  
26 2017, is amended to read as follows:

27 *b.* The owner or interest holder is criminally responsible  
28 for the conduct giving rise to its forfeiture, ~~whether or not~~  
29 ~~the owner or interest holder is prosecuted or convicted.~~ If  
30 the forfeiture is for property valued at less than the minimum  
31 civil forfeiture amount, the owner or interest holder must also  
32 be convicted of the criminal offense for the conduct giving  
33 rise to forfeiture.

34 Sec. 3. NEW SECTION. 809A.6A Limitation on transfer of  
35 seized property to federal law enforcement.

1 A law enforcement agency or prosecuting authority in this  
2 state shall not directly or indirectly transfer or refer any  
3 property seized by the agency or authority to any federal law  
4 enforcement authority or other federal agency for purposes of  
5 forfeiture under federal law unless the value of the seized  
6 property exceeds one hundred thousand dollars, excluding the  
7 potential value of the sale of contraband, or the property is  
8 being transferred or referred for federal criminal forfeiture  
9 proceedings.

10 Sec. 4. Section 809A.8, subsection 1, paragraph a,  
11 subparagraph (2), Code 2017, is amended to read as follows:

12 (2) File a judicial forfeiture proceeding within ninety  
13 days after notice of pending forfeiture of property upon which  
14 a proper claim has been timely filed pursuant to section  
15 809A.11, or, if the value of the property is less than the  
16 minimum civil forfeiture amount, file a judicial forfeiture  
17 proceeding within ninety days after the conclusion of the  
18 criminal prosecution.

19 Sec. 5. Section 809A.8, subsection 1, paragraph d,  
20 unnumbered paragraph 1, Code 2017, is amended to read as  
21 follows:

22 If a petition is timely filed, the prosecuting attorney may  
23 delay filing a judicial forfeiture proceeding for one hundred  
24 eighty days after the notice of pending forfeiture, or, if the  
25 value of the property is less than the minimum civil forfeiture  
26 amount, one hundred eighty days after the conclusion of the  
27 criminal prosecution, and the following procedures shall apply:

28 Sec. 6. Section 809A.12, subsections 6, 7, and 14, Code  
29 2017, are amended to read as follows:

30 6. A defendant ~~convicted in any~~ whose criminal proceeding  
31 results in a conviction is precluded from later denying the  
32 essential allegations of the criminal offense ~~of which the~~  
33 ~~defendant was convicted~~ in any proceeding pursuant to this  
34 section. ~~For the purposes of this section, a conviction~~  
35 ~~results from a verdict or a plea of guilty.~~ A defendant

1 whose conviction is overturned on appeal may file a motion to  
2 correct, vacate, or modify a judgment of forfeiture under this  
3 subsection.

4 7. In any proceeding under this chapter, if a claim is  
5 based on an exemption provided for in this chapter, the  
6 ~~burden of proving the existence of the exemption is on the~~  
7 ~~claimant. However, once the claimant comes forward with some~~  
8 ~~evidence supporting the existence of the exemption, the state~~  
9 ~~prosecuting attorney must provide some evidence to negate the~~  
10 ~~assertion of the~~ prove by clear and convincing evidence that  
11 the exemption does not apply. The state's evidence must be  
12 ~~substantial, though not necessarily rising to the level of a~~  
13 ~~preponderance of the evidence, and more than a simple assertion~~  
14 ~~of the claimant's interest in the property. The agency or~~  
15 ~~political subdivision bringing the forfeiture action shall~~  
16 ~~pay the reasonable attorney fees and costs, as determined by~~  
17 ~~the court, incurred by a claimant who prevails on a claim for~~  
18 ~~exemption in a proceeding under this chapter.~~

19 14. An acquittal or dismissal in a criminal proceeding shall  
20 not preclude civil proceedings under this chapter if the value  
21 of the property to be forfeited is equal to or exceeds the  
22 minimum civil forfeiture amount.

23 Sec. 7. Section 809A.12, Code 2017, is amended by adding the  
24 following new subsection:

25 NEW SUBSECTION. 7A. The prosecuting attorney must prove  
26 by clear and convincing evidence that the property is property  
27 subject to forfeiture.

28 Sec. 8. Section 809A.12, subsection 10, paragraph a, Code  
29 2017, is amended to read as follows:

30 a. The If the property to be forfeited is equal to or  
31 exceeds the minimum civil forfeiture amount, that the person  
32 ~~has~~ engaged in the conduct giving rise to forfeiture. If  
33 the property to be forfeited is less than the minimum civil  
34 forfeiture amount, that the person was convicted for the  
35 conduct giving rise to forfeiture.

1     Sec. 9. NEW SECTION.   **809A.12A Limitations on civil**  
2 **forfeiture.**

3     1. If the total value of the property seized for forfeiture  
4 is less than the minimum civil forfeiture amount, a judicial  
5 forfeiture proceeding shall not be brought unless one of the  
6 following applies:

7     *a.* The conduct giving rise to forfeiture resulted in a  
8 conviction.

9     *b.* The property owner is deceased.

10    *c.* Charges have been filed against the property owner, a  
11 warrant was issued for the arrest of the property owner, and  
12 either of the following applies:

13     (1) The property owner is outside the state and is unable to  
14 be extradited or brought back to the state for prosecution.

15     (2) Law enforcement has made reasonable efforts to locate  
16 and arrest the property owner, but the property owner has not  
17 been located.

18    *d.* The property owner has not claimed the property subject  
19 to forfeiture or asserted any interest in the property at any  
20 time during or after the seizure of the property, and all  
21 claims brought under section 809A.11 have been denied.

22    2. The prosecuting attorney has the burden to prove by  
23 clear and convincing evidence that the value of the property  
24 is or exceeds the minimum civil forfeiture amount in any civil  
25 action.

26    Sec. 10. NEW SECTION.   **809A.12B Proportionality review.**

27    1. Property shall not be forfeited as an instrumentality  
28 under this chapter to the extent that the amount or value  
29 of the property is disproportionate to the severity of the  
30 offense. The prosecuting attorney shall have the burden to  
31 prove by clear and convincing evidence that the amount or value  
32 of the property subject to forfeiture is proportionate to the  
33 severity of the offense.

34    2. Contraband and any proceeds obtained from the offense are  
35 not subject to proportionality review under this section.

1     3. In determining the severity of the offense for purposes  
2 of forfeiture of an instrumentality, the court shall consider  
3 all relevant factors including but not limited to the  
4 following:

5     a. The seriousness of the offense and its impact on the  
6 community, including the duration of the activity and the harm  
7 caused or intended by the person whose property is subject to  
8 forfeiture.

9     b. The extent to which the person whose property is subject  
10 to forfeiture participated in the offense.

11     c. Whether the offense was completed or attempted.

12     d. The extent to which the property was used in committing  
13 the offense.

14     e. The sentence imposed for committing the offense that is  
15 the basis of the forfeiture, if applicable.

16     4. In determining the value of the property that is an  
17 instrumentality and that is subject to forfeiture, the court  
18 shall consider relevant factors including but not limited to  
19 the following:

20     a. The fair market value of the property.

21     b. The value of the property to the person whose property  
22 is subject to forfeiture, including hardship to the person  
23 or to innocent persons if the property were forfeited. The  
24 burden shall be on the person whose property is subject to  
25 forfeiture to show the value of the property to that person and  
26 any hardship to that person.

27     Sec. 11. Section 809A.13, subsections 7 and 8, Code 2017,  
28 are amended to read as follows:

29     7. The forfeiture hearing shall be held without a jury  
30 and within sixty days after service of the complaint unless  
31 continued for good cause. The prosecuting attorney shall  
32 have the ~~initial~~ burden of proving by clear and convincing  
33 evidence that the property is subject to forfeiture ~~by a~~  
34 ~~preponderance of the evidence~~. If the state so proves the  
35 property is subject to forfeiture, the claimant ~~has the burden~~

1 ~~of proving~~ may assert that the claimant has an interest in the  
2 property which is exempt from forfeiture under [this chapter](#) by  
3 ~~a preponderance of the evidence~~. If the claimant asserts the  
4 existence of the exemption, the prosecuting attorney has the  
5 burden of proving by clear and convincing evidence that the  
6 exemption does not apply.

7     8. The court shall order the interest in the property  
8 returned or conveyed to the claimant if the prosecuting  
9 attorney fails to meet the state's burden ~~or the claimant~~  
10 ~~establishes by a preponderance of the evidence that the~~  
11 ~~claimant has an interest that is exempt from forfeiture~~. The  
12 court shall order all other property forfeited to the state and  
13 conduct further proceedings pursuant to [sections 809A.16](#) and  
14 [809A.17](#).

15     Sec. 12. Section 809A.14, subsection 7, paragraph d, Code  
16 2017, is amended to read as follows:

17     d. In accordance with the findings made at the hearing, the  
18 court may amend the order of forfeiture if it determines that  
19 any claimant has ~~established by a preponderance of the evidence~~  
20 ~~that the claimant has~~ properly petitioned for recognition  
21 of exemption under section 809A.11 and that the prosecuting  
22 attorney has not shown, by clear and convincing evidence, that  
23 the claimant does not have an interest in the property which is  
24 exempt under the provisions of [section 809A.5](#).

25     Sec. 13. Section 809A.15, subsection 1, unnumbered  
26 paragraph 1, Code 2017, is amended to read as follows:

27     The court shall order the forfeiture of any other property  
28 of a person, including a claimant, up to the value of  
29 that person's property found by the court to be subject to  
30 forfeiture under [this chapter](#), if the prosecuting attorney  
31 proves by clear and convincing evidence that any of the  
32 following applies to the person's forfeitable property:

33     Sec. 14. Section 809A.16, subsection 2, Code 2017, is  
34 amended to read as follows:

35     2. Within one hundred eighty days of the date of a

1 declaration of forfeiture, an owner or interest holder in  
2 property declared forfeited pursuant to subsection 1 may  
3 petition the court to have the declaration of forfeiture set  
4 aside, after making a prima facie showing that the state failed  
5 to serve proper notice as provided by section 809A.13. Upon  
6 such a showing the court shall allow the state to demonstrate  
7 by a ~~preponderance of the~~ clear and convincing evidence that  
8 notice was properly served. If the state fails to meet  
9 its burden of proof, the court may order the declaration of  
10 forfeiture set aside. The state may proceed with judicial  
11 proceedings pursuant to this chapter.

12 Sec. 15. NEW SECTION. 809A.18A Recordkeeping.

13 1. Each law enforcement agency that has custody of any  
14 property that is subject to this chapter shall adopt and comply  
15 with a written internal control policy that does all of the  
16 following:

17 a. Provides for keeping detailed records as to the amount  
18 of property acquired by the agency and the date property was  
19 acquired.

20 b. Provides for keeping detailed records of the disposition  
21 of the property, which shall include but not be limited to all  
22 of the following:

23 (1) The manner in which the property was disposed, the  
24 date of disposition, detailed financial records concerning  
25 any property sold, and the name of any person who received  
26 the property. The record shall not identify or enable  
27 identification of the individual officer who seized any item  
28 of property.

29 (2) An itemized list of the specific expenditures made  
30 with amounts that are gained from the sale of the property and  
31 that are retained by the agency, including the specific amount  
32 expended on each expenditure, except that the policy shall  
33 not provide for or permit the identification of any specific  
34 expenditure that is made in an ongoing investigation.

35 2. The records kept under the internal control policy



1 shall be open to public inspection during the agency's regular  
2 business hours. The policy adopted under this section is a  
3 public record open for inspection under chapter 22.

4 Sec. 16. APPLICABILITY. This Act applies to forfeiture  
5 proceedings that begin on or after the effective date of this  
6 Act.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with  
9 the explanation's substance by the members of the general assembly.

10 This bill relates to asset forfeiture and includes a  
11 prohibition on civil asset forfeiture for property valued at  
12 less than a minimum amount, increases the standard of proof  
13 required for asset forfeiture to clear and convincing evidence,  
14 prohibits the transfer of seized property to the federal  
15 government for forfeiture for property valued at less than a  
16 minimum amount, requires a proportionality review with regard  
17 to property to be forfeited, and requires law enforcement  
18 agencies to retain certain records related to asset forfeiture.

19 CIVIL ASSET FORFEITURE. Asset forfeiture is a process by  
20 which contraband and proceeds or instrumentalities related  
21 to criminal activity may be seized by the state and sold.  
22 Under current law, conduct giving rise to forfeiture is an  
23 act or omission which is a public offense that is a serious  
24 or aggravated misdemeanor or felony. However, forfeiture  
25 proceedings are not precluded if the state fails to convict,  
26 indict, or charge the person whose conduct gave rise to  
27 forfeiture.

28 Under the bill, asset forfeiture for property valued at less  
29 than \$15,000 is prohibited unless the conduct giving rise to  
30 forfeiture resulted in a conviction, the property owner is  
31 deceased, charges were filed and an arrest warrant was issued  
32 but law enforcement is not able to execute the arrest due to  
33 the property owner being out of state or not locatable, or  
34 the property owner has not claimed the property subject to  
35 forfeiture or asserted any interest in the property.

1 "Conviction" is defined to include a finding of guilt, a plea  
2 of guilty, deferred judgment, deferred or suspended sentence,  
3 adjudication of delinquency, or circumstances where a person  
4 is not charged with a criminal offense that is a serious or  
5 aggravated misdemeanor or felony related to the action for  
6 forfeiture based in whole or in part on the person's agreement  
7 to provide information regarding the criminal activity of  
8 another person.

9 The bill provides that the minimum threshold of \$15,000 is  
10 to be annually increased or decreased in accordance with the  
11 consumer price index.

12 BURDEN OF PROOF. Under current law, a prosecuting attorney  
13 must prove by a preponderance of the evidence that property is  
14 subject to forfeiture and that the defendant's conduct gave  
15 rise to forfeiture. The bill provides that the prosecuting  
16 attorney must prove these elements by clear and convincing  
17 evidence.

18 Under current law, if a property claimant comes forward with  
19 some evidence supporting the existence of an exemption for  
20 forfeiture, the state must provide some evidence to negate the  
21 assertion, which must be substantial, though may be less than  
22 a preponderance of the evidence. The bill provides that if a  
23 claimant asserts the existence of an exemption, the prosecuting  
24 attorney has the burden of proving by clear and convincing  
25 evidence that the exemption does not apply.

26 Under current law, a presumption arises that property of a  
27 person is subject to forfeiture if the state establishes that  
28 the person has engaged in conduct giving rise to forfeiture.  
29 The bill provides that if the property to be forfeited is less  
30 than the minimum civil forfeiture amount, such a presumption  
31 only arises if the person was convicted for the conduct giving  
32 rise to forfeiture.

33 Under current law, a court may order the forfeiture of  
34 substitute assets if the forfeitable property cannot be  
35 located; has been transferred or conveyed to, sold to, or

1 deposited with a third party; is beyond the jurisdiction of  
2 the court; has been substantially diminished in value while  
3 not in the actual physical custody of the court, the seizing  
4 agency, the prosecuting attorney, or their designee; has been  
5 commingled with other property that cannot be divided without  
6 difficulty; or is subject to any interest of another person  
7 which is exempt from forfeiture under Code chapter 809A. The  
8 bill requires the prosecuting attorney to prove one of the  
9 above conditions of the property by clear and convincing  
10 evidence.

11     EQUITABLE SHARING. Under current law, there is no  
12 limitation on a law enforcement agency or prosecuting authority  
13 with regard to the transfer of seized property to a federal  
14 law enforcement agency or authority, a process referred to as  
15 equitable sharing. Under equitable sharing, property seized  
16 by state authorities is transferred to federal authorities for  
17 forfeiture, and the state and federal authorities then share  
18 the proceeds. The bill provides that a state law enforcement  
19 agency or prosecuting authority shall not participate in  
20 equitable sharing unless the value of the seized property  
21 exceeds \$100,000 or the property is being transferred or  
22 referred for federal criminal forfeiture proceedings.

23     PROPORTIONALITY REVIEW. Under current Code chapter 809A,  
24 there is no requirement that the value of an instrumentality  
25 forfeited be proportionate to the crime committed, though  
26 the Iowa supreme court has held that forfeiture can be  
27 unconstitutional under the Eighth Amendment's prohibition on  
28 excessive fines if the defendant can show that the value of  
29 the property is grossly disproportionate to the crime. The  
30 bill provides that property shall not be forfeited as an  
31 instrumentality to the extent that the amount or value of the  
32 property is disproportionate to the severity of the offense  
33 and that the prosecuting attorney has the burden of showing  
34 proportionality by clear and convincing evidence. Contraband  
35 and proceeds are not subject to proportionality review.

1     RECORDKEEPING. The bill provides that each law enforcement  
2 agency that has custody of any property that is subject to Code  
3 chapter 809A shall adopt and comply with a written internal  
4 control policy that provides for keeping detailed records as  
5 to the amount of property acquired by the agency, the date  
6 property was acquired, and the disposition of the property,  
7 including the manner in which it was disposed, the date of  
8 disposition, detailed financial records concerning any property  
9 sold, and the name of any person who received the property.  
10 The records kept under the internal control policy shall be  
11 open to public inspection during the agency's regular business  
12 hours, and the adopted policy is a public record open for  
13 inspection under Code chapter 22.  
14     The bill applies to forfeiture proceedings that begin on or  
15 after the effective date of the bill.